

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Jason Smith (referred to herein as “Mr. Smith”), an individual, and Roselle LLA Inc., an Illinois corporation; 459 Randall Crossings Co., an Illinois corporation; and Bull Dog Ale House Inc., an Illinois corporation (referred to herein collectively as “Bull Dog Ale House”).

WHEREAS, Mr. Smith filed an action against Bull Dog Ale House, which is currently pending as *Smith v. Roselle LLA Inc., et al.*, Case No. 16-CV-10346 in the United States District Court for the Northern District of Illinois, Eastern Division, alleging violations of the Fair Labor Standards Act and Illinois law (the “Lawsuit”); and

WHEREAS, the Parties to this Agreement wish to resolve all claims raised by Mr. Smith in the Lawsuit;

NOW, THEREFORE, in consideration of the covenants and promises set forth below, and for good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. **Settlement Payment.** Upon the Court’s approval and execution of the Proposed Order Granting Motion for Approval of Settlement and Dismissal with Prejudice, which is included in **Exhibit B** hereto, then in consideration of the matters set forth herein, Bulldog Ale House agrees to pay Mr. Smith the total sum of Seven Thousand Four Hundred Forty Six Dollars and Forty Cents (\$7,446.40) that shall be distributed to Mr. Smith and his attorneys as follows:

(a) A first check payable to “Jason Smith” in the amount of Nine Hundred Seventy Three Dollars and Twenty Cents (\$973.20), less ordinary tax withholdings and all required deductions, shall be sent to Walcheske & Luzi, LLC within seven (7) days of the effective date of this Agreement. Bull Dog Ale House will issue an IRS Form W-2 in connection with this payment. The Parties agree that tax withholding for this payment shall be based on a Form W-4 that Mr. Smith shall provide Bull Dog Ale House.

(b) A second check payable to “Jason Smith” in the gross amount of Nine Hundred Seventy Three Dollars and Twenty Cents (\$973.20) shall be sent to Walcheske & Luzi, LLC within seven (7) days of the effective date of this Agreement. This payment shall be classified as liquidated damages. Bull Dog Ale House will issue an IRS Form 1099 to Mr. Smith in connection with this payment.

(c) A check payable to “Walcheske & Luzi, LLC” in the amount of Four Thousand Five Hundred Dollars and No Cents (\$4,500.00) shall be sent to Walcheske & Luzi, LLC within seven (7) days of the effective date of this Agreement. This payment shall be classified as attorneys’ fees and costs. Mr. Smith’s counsel shall provide a completed IRS Form W-9 to Bull Dog Ale House and Bull Dog Ale House will issue an IRS Form 1099 in connection with this payment.

(d) A check payable to “Cooney & Conway” in the amount of One Thousand Dollars and No Cents (\$1,000.00) shall be sent to Walcheske & Luzi, LLC within seven (7) days of the effective date of this Agreement. This payment shall be classified as attorneys’ fees and costs. Mr. Smith’s counsel shall provide a completed IRS Form W-9 to Bull Dog Ale House and Bull Dog Ale House will issue IRS Form 1099 in connection with this payment.

(e) All checks described above shall be sent by Bull Dog Ale House to Walcheske & Luzi, LLC, 15850 W. Bluemound Road, Suite 304, Brookfield, Wisconsin 53005, by United States first class, certified mail.

(f) For purposes of this Section 1, the “effective date” of this Agreement shall be the date on which the Court files its executed Order Granting Motion for Approval of Settlement and Dismissal with Prejudice.

2. Dismissal with Prejudice of the Lawsuit. Mr. Smith shall take all reasonable action to withdraw and dismiss with prejudice the Lawsuit with the court retaining jurisdiction as to enforcement of this Agreement. Specifically, Mr. Smith shall seek to dismiss the Lawsuit, with prejudice, by authorizing the filing of a Joint Motion for Court Approval of Settlement and Dismissal of Complaint with Prejudice, in the form attached hereto as **Exhibit A**, within five (5) business days after receipt of Bull Dog Ale House’s signature to this Agreement. The Parties agree to take all reasonable steps, whether individually or jointly, to obtain the Court’s approval of this Agreement and the dismissal of the Lawsuit with prejudice in a timely manner.

3. Neutral Reference. In response to any request to verify employment by a third-party, Bulldog Ale House and its representatives shall respond with only Mr. Smith’s dates of employment and last position held.

4. Applicable Law. This Agreement shall be governed by and will be construed in accordance with the laws of the State of Wisconsin.

5. Entire Agreement. This Agreement sets forth the entire agreement and understanding between Bull Dog Ale House and Mr. Smith, on the subject matter hereof, and supersedes all prior and contemporaneous discussions and negotiations between them. This Agreement may be amended, modified or supplemented only by a written instrument hand-signed by the Parties with the same level of formality as this Agreement.

6. Miscellaneous. This Agreement may be executed in counterparts, which may be exchanged by mail, courier, facsimile, email or other electronic form of transmission. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement.

7. Attorney's Fees. If Bull Dog Ale House shall be found by a court of law to be in breach of this Agreement, Bull Dog Ale House shall pay Mr. Smith's reasonable attorney's fees and costs to enforce this Agreement.

JASON SMITH

ROSELLE LLA INC.

Date: _____

By: _____

Title: _____

Date: _____

Subscribed and sworn to before me
On this ____ day of _____, 2017

Notary Public, State of Illinois

My commission expires: _____

459 RANDALL CROSSINGS CO.

BULL DOG ALE HOUSE INC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Subscribed and sworn to before me
On this ____ day of _____, 2017

Subscribed and sworn to before me
On this ____ day of _____, 2017

Notary Public, State of Illinois

Notary Public, State of Illinois

My commission expires: _____

My commission expires: _____

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JASON SMITH

Plaintiff,

v.

ROSELLE LLA INC., et al.

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Case No. 16-CV-10346

**JOINT MOTION FOR COURT APPROVAL OF
SETTLEMENT AND DISMISSAL OF COMPLAINT WITH PREJUDICE**

The Parties, by and through their undersigned counsel, respectfully move this Court for approval of their Settlement Agreement and Release, resolving the matter as set forth therein. In support thereof, the Parties state and jointly stipulate as follows:

1. Plaintiff Jason Smith filed his Complaint against Defendants Roselle LLA Inc., 459 Randall Crossings Co., and Bull Dog Ale House Inc. (collectively, "Bull Dog Ale House") on November 4, 2016. In the Complaint, Smith alleges that Bull Dog Ale House failed to pay him overtime compensation at a rate of time and one-half of his regular rate for all overtime hours he worked in violation of the Fair Labor Standards Act ("FLSA") and Illinois law. Additionally, Mr. Smith's claims for relief sought liquidated damages pursuant to the FLSA.

2. Smith has not raised any class, collective or representative claims under the FLSA, Federal Rule 23, or Illinois law. Smith proceeds only in his individual capacity.

3. The Parties entered into settlement negotiations for the purpose of avoiding the costs and expenses of litigation.

4. The Parties have, in fact, engaged in extensive and good-faith settlement negotiations. Both Parties were represented by competent and experienced counsel throughout the course of these negotiations.

5. The Parties' negotiations have resulted in an accord and satisfaction embodied in the Settlement Agreement and Release, which the Parties have signed and which the Parties and their respective counsel believe and agree represents a fair, reasonable, and adequate settlement of Smith's claims against Bull Dog Ale House.

6. A copy of the Settlement Agreement and Release has been submitted to the Court simultaneously with the filing of this Motion.

7. The Parties are in agreement that this Court may enter an Order Granting Motion for Approval of Settlement and Dismissal with Prejudice. *See Larkin v. CPI Corp.*, No. 10-cv-411-WMC, 2011 U.S. Dist. LEXIS 127680, at *2 (W.D. Wis. Nov. 3, 2011) (*citing Walton v. United Consumers Club*, 786 F.2d 303, 306 (7th Cir. 1986) and *Lynn's Food Stores, Inc. v. U.S. Dep't of Labor*, 679 F.2d 1350, 1352-53 (11th Cir. 1982) (requiring the settlement to constitute "a fair and reasonable resolution of a bona fide dispute over FLSA provisions"))).

8. WHEREFORE, the Parties respectfully request that this Court: (1) approve the Parties Settlement Agreement and Release, resolving the matter on the terms set forth therein; and (2) dismiss this case, with prejudice, but retain jurisdiction for the limited purpose of enforcing the Settlement Agreement and Release.

SIGNATURE PAGE FOLLOWS

Dated this _____ day of February, 2017.

WALCHESKE & LUZI, LLC
Counsel for Plaintiff

ROESER & VUCHA, LLC
Counsel for Defendant

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EXHIBIT B

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JASON SMITH

Plaintiff,

v.

ROSELLE LLA INC., et al.

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Case No. 16-CV-10346

**PROPOSED ORDER GRANTING MOTION FOR APPROVAL
OF SETTLEMENT AND DISMISSAL WITH PREJUDICE**

Before the Court is the Joint Motion for Approval of the Parties' Settlement Agreement and Release. Upon consideration, it is **ORDERED**:

- (1) The Motion is **GRANTED**. The settlement of this matter and release of Plaintiff's claims is **APPROVED**.
- (2) The Clerk is directed to **DISMISS** this case **WITH PREJUDICE**. The Court retains jurisdiction only for the limited purpose of enforcing the Settlement Agreement and Release.

Dated this ____ day of _____, 2017.

Honorable Rebecca R. Pallmeyer
United States District Court Judge